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HISTORICAL SKETCH OF THE STATE LAW LIBRARY OF MONTANA

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Historical sketch of the State Law Libra



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Historical Sketch Preface

The following historical sketch of the Montana State Law Library was prepared by Ashburn K. Barbour. It depicts the conditions surrounding the courts in Montana in territorial days and the growth of the Law Library since that time. Mr. Barbour was a pioneer member of the Montana Bar and a gentleman of legal and literary attainment, who arrived in Helena in 1883, six years before Montana achieved statehood. He served as State Law Librarian for thirty-two years (1905-1937), and devoted years of research in bringing together information gleaned from original documents and illuminated by personal recollections.

Mr. Barbour died before his report was completed. His successor, State Law Librarian Adeline J. Clarke (1937-1954), assembled and edited his notes and writings, and presented them to her Board of Trustees in 1938. The Chief Justice at that time, O.F. Goddard, recommended that the historical sketch be printed, as "nothing on this subject has ever been written in this state before".

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Few law libraries are fortunate enough to have such unique and fascinating histories available to them. We hope that, in Mr. Barbour's words, "it (will) awaken an interest in or create an appreciation for the value of" all law libraries which have been established, protected, and nourished "against discouraging odds".

**Judith A. Meadows
State Law Librarian
August 10, 1986**

MONTANA STATE LAW LIBRARY

By ASHBURN KENNETT BARBOUR

This sketch has been prepared to answer, in a measure, a query frequently put to the State Law Librarian, "What was the origin of the Montana State Law Library? No written history as yet has been perfect or altogether delightful, but the writer of this summary hopes his effort will, in a degree, answer many inquiries concerning this institution. The conditions which surrounded the organization of the Montana territorial courts and legislative bodies, with the almost entire absence of legal literature and other sources of desired information, will, in part, explain the intense need of a law library in our early community. It is impossible to fix an exact date when the library came into existence, as no record of its institution can be found within its own archives or, apparently, elsewhere. No man or woman now living is known to have a memory of its beginning. The greater portion of the data herein set forth is taken from legislative acts, resolutions and memorials.

Montana Territory, carved mainly out of the Territory of Idaho, was created by Act of Congress approved May 26, 1864. That Act was known as the "Organic Act," and was practically the constitution of the Territory.

About all of the law which affected the inhabitants of Montana at the time of the organization of our first courts was the Constitution of the United States, the Organic Act whereby Congress created the Territory, and a few fragmentary acts of Congress. There was no common law in Montana at that time, as there had been no legislative session to adopt it and the Federal Government had never adopted the common law as a part of its legal system. The few acts of Congress pertaining to mining were not applicable in the western Territory, nor were there any federal laws concerning the use of waters within the public domain, acquisition of public land, taking of timber therefrom, or trespass thereon.

The first federal law concerning acquisition of water rights on the public domain was enacted in 1866. That act simply recognized such rights as established by custom and maintained by the courts of the Pacific states and territories (Yale on Mining Claims and Water Rights, pages 136-141). The first general law passed by the federal congress, under which title might be acquired to any of the public mineral lands within what are known as the precious mineral bearing states and territories, was that of July 26, 1866. (Lindley on Mines, Vol. 1, page 89). As to the agricultural, grazing and timber lands within the Territory of Montana, there were no federal acts controlling the same, and none of those lands had been surveyed at that date.

A set of emergency mining rules had been adopted by the miners of Virginia City and enforced by a mining court established there. Later the territorial and federal courts recognized these local mining rules and customs as adopted by the early mining communities before the Congressional Act became law.

These facts preclude any notion of the existence of any civil law within the Territory at the time the first judges arrived in Virginia City in 1864.

The first three judges to sit on the Montana Supreme Bench did so on appointment by President Abraham Lincoln. These were Hezekiah L. Hosmer, chief justice, Lorenzo P. Williston and Lyman E. Munson, associate justices. Hosmer and Williston arrived in Virginia City in the summer of 1864. Munson came to Helena some months later (March, 1865) to fill the associate justiceship to which Ammi Giddings had previously been named by President Lincoln but for which he had refused to qualify. These pioneer jurists served as district judges as well as Federal District and Circuit Judges.

Judge Hosmer had been admitted to the bar in the state of Ohio and had practiced law there for a few brief periods, but had engaged principally in newspaper and literary work before his appointment to the Montana judgeship. He had also held an office in the Department of the Interior. These experiences afforded him a broad acquaintance with men and business affairs. His literary acquirements were broad, and he lectured upon political and literary subjects impressively.

Judge Williston had practiced at the bar in Pennsylvania and Ohio, and had acquired a goodly knowledge of the common law at a time when case and statutory laws were not so much in vogue as they became in later times.

Judge Munson had a more extended experience in the practice of law. A native of Berkshire County, Massachusetts, and a graduate of Yale University Law School, he had practiced in the New England states. It is interesting to note that during the night previous to his arrival in Montana to administer the law, the eighth hanging had taken place on the already famous Hangman's Tree, corner Blake and Third streets, Helena. This no doubt was a disturbing incident to a gentleman just arriving from a section where such matters were handled by courts of law. However he came to the conclusion, after residing among and communicating with the people of his new home, that the extermination of outlaws by the Vigilance Committee had been both necessary and justifiable. He held a term of the District Court at Helena during the summer of 1865, and on July 31 in addressing a grand jury, took occasion to say that whatever excuse there might have been theretofore for secret trials and midnight executions, as courts had now been organized the necessity of such measures had passed away, and he firmly admonished the jury and citizens in general to thenceforth uphold and support the courts.

The Federal Government appointed these judges and sent them out to the Territory with the command to organize the courts and to adjudge the civil controversies between man and man, without any laws to enforce, save the federal criminal laws, or by which to be guided in the organization and conduct of those courts—a most extraordinary situation. The only available law book was a paper-bound pamphlet containing the Acts of the Idaho Legislature passed the previous winter. The moment Montana became a separate territory the Idaho laws lost all force and effect within the boundaries of Montana. No books, no libraries, no laws. Instinctively the newly organized court turned to the bar for suggestions and advice. Fortunately there were a number of young lawyers in Virginia City at that time whose judgment and advice were worthy of consideration. The upshot of the situation was that at a joint meeting of the members of the court and bar it was concluded after several evenings of stormy and noisy

debate in the dining room of the old Planters Hotel, in Virginia City, to adopt the Idaho code for use until the legislature should convene the next fall.

"For several evenings the dining room of the Planters' Hotel heard echoes from the time of the Decemviri down to and including the late statute of the Territory of Idaho," says J. H. Hosmer, son of the Chief Justice, in a revision of an article written by his father describing those early epochal meetings. This adoption of the Idaho code greatly relieved the stress, but nevertheless the judges were often compelled to resort to those general principles of law which had become familiar to them in eastern communities where conditions were vastly different from those prevailing in the western Territory.

About the time of the organization of the Territorial courts, the copy of the Idaho Civil and Criminal Practices Act was in such great demand and in such constant use that it shortly fell to pieces from excessive handling. In the history of Montana the writer knows of no single law book which by force of circumstances has made such an indelible impression upon our legal system. Its usefulness has not yet entirely subsided, as both bench and bar still frequently resort to it in searching for the origin and history of our remedial and substantive statutory laws.

Correspondence of Sidney Edgerton, first governor of Montana Territory, shows that prior to the meeting of the Bannack legislature he had to dispatch David D. Chamberlain to Lewistown, Idaho, to obtain new copies of the laws of that Territory for use by the Montana legislative assembly. The legislature appropriated the sum of three hundred dollars to compensate Chamberlain for this service.

It is quite possible that there were to be found somewhere in the vast territorial domain a few law books which had been tucked away in his abbreviated baggage by some lawyer emigrating to the new Territory. However none of these seems to have come to light for many months after the organization of the Court. It is remarkable too that the Federal Government, which appointed judges to adjudge legal controversies of a people, did not furnish them with a few facilities to assist them in the performance of their important duties.

From the foregoing it will be seen that an intense need and desire for a territorial law library existed even from the beginning, but several years elapsed before any fruition came of that wish. That the urgent need for a law library was constantly felt may be judged somewhat by the utterances of the legislature. For while the Territory had a very limited revenue and no money with which to purchase a law library, the legislative assembly was constantly passing resolutions for the payment of freight and express upon law books, which they were apparently expecting from some source, especially from Congress.

The first legislative assembly, which met in November, 1864, made no provision whatever for acquisition of a library. It was not entirely unconscious, however, of the desirability of such an institution, and seems to have had some dream or vision that a territorial library already existed. For oddly, in prescribing the duties of the Territorial auditor, it provided that he should keep his office at the seat of government, "in connection with the library of the territory." That provision, however, evidently arose from the fact that the session simply copied bodily the Idaho law, which also provided that the auditor should be Territorial Librarian. The latter provision was re-enacted several times, so that subsequent sessions apparently became obsessed with the belief that Montana actually possessed a law library. Legislators at that first session, however, created the Montana Historical Society, showing a greater anxiety to have a depository for a biographical account of themselves than to provide means whereby their courts could function intelligently.

The second session (March, 1866) manifested interest in the establishment of a law library by passing a joint memorial to Congress, reciting it had been reliably informed that "an appropriation was made by Congress for a territorial library for Montana and that said library had been purchased and put in charge of a government official appointed for this Territory, that although said official had arrived in this Territory, and departed from it again, the said library had not come to hand," and praying Congress to appropriate a sufficient fund to purchase a Territorial library and "place it in charge of a discreet and proper person, to be sent in his charge, to the Librarian of the Territory, where it is, at this time much needed."

The third session (November, 1866) apparently was of the impression that the prayer of the second session would be granted. It made appropriation, by joint resolution, authorizing and requiring the territorial auditor to pay any freight or express charges on any books or library belonging to the Territory, "not exceeding the sum of \$500.00." We cannot find any account of congressional action in the matter, and no indication that any library arrived from any source. The legislature, however, was evidently anxious that any library should not be lost, strayed or stolen.

The fourth session (1867) made still another gesture in anticipation of paying for carriage upon books, which again never arrived. On December 24 a resolution was passed by this legislative body directing the auditor to pay to J. J. Roe & Company the sum of \$600.00 for freight and express charges for books and library belonging to the Territory, shipped from St. Louis to Virginia City. The amount to be paid was limited to \$600.00. If the books had arrived prior to the passage of the resolution it is obvious the exact amount due would have been known to the legislature, and named in the resolution.

Honorable Samuel F. Word at this session introduced House Bill No. 26, providing for establishment of a territorial library. The bill, on report of committee, was indefinitely postponed. As a member of the early Territorial bar Mr. Word was evidently appreciative of the need of such a library and recognized that some steps should be taken toward its establishment.

Finally, however, after many years of seeming neglect, the Congress yielded to the supplication of the new western territories for law libraries for use by territorial courts. In 1870 the sum of \$2,500 was appropriated by Congress for each of five territories, including Montana, for the purchase of law libraries. Montana's first books provided by Congress came to hand then, in all probability, in the year 1871. And that was the foundation and beginning of our present State Law Library. No record of the number or character of those books is extant, but it is fair to presume that the United States Supreme Court Reports were included down to and including the Ninth Wallace, a few of the Statues at Large, and also the Revision of 1815. We cannot venture a guess

as to the other volumes. Nor is any record available as to where these books were housed in Virginia City, where the capital remained until 1875 when it was removed to Helena.

We have been unable to discover any books donated to the library so-called, prior to the year 1870, with the exception of one volume, a copy of the U. S. Law Register, a lawyers' directory, published in 1866. According to an inscription on the inner front cover, it was donated by the Honorable Green Clay Smith, Governor of the Territory, December 10, 1866, and bears his autograph. The publication could not be called a law book. It contains lists of attorneys throughout the country, terms of various courts, names of state and county officers, and the type of literature commonly found in the present day lawyers' directories, and served a like purpose.

The first appropriation by a Montana Legislature for the purchase of books was at the session of 1873. The amount provided was \$200 per annum, and was "for the purchase of law reports in continuation of the series now in the Territorial Law Library." This appropriation continued through the year 1878. For the years 1879 to 1882 the appropriation was \$100 per annum. For the succeeding two years the appropriation was \$300 annually; however, in 1883, there was an additional appropriation of \$2,000 for the purchase of books, which was the first substantial appropriation made by the Territorial legislature for the law library.

At the time the first appropriation was made (1873) the library was under the supervision of the justices of the Supreme Court, and the Territorial Auditor was ex-officio librarian. The justices were required to make an annual report to the Governor. The legislative assembly showed its supreme confidence in the gentlemen by providing that the Territorial Auditor should have the authority, if he saw fit, to require them to give security for the faithful application of that magnificent annual appropriation of \$200.

The auditor was continued as ex-officio librarian until the organization of the Montana Library under the Act of 1881. He was a mere custodian of books, but apparently not a good keeper. Governor Potts, calling legislative attention to the report of the library board for the years 1874-75, said: "The report contains no information as to the condition of

the Library except that the books are scattered, and that the appropriation of 1875 had not been expended. It appears to me that you should not hesitate to provide a law for the organization of a Territorial library, with rules and regulations for its government . . . and a librarian appointed to call the books together."

Governor Potts was a lawyer, and during the war of the Rebellion a commanding officer and disciplinarian. Doubtlessly scatter and disorder (even in a law library) were distasteful to him. The legislature took no steps, however, in the way recommended by him until the Act of 1881, which created the "Montana Library." That Act was introduced in the Territorial Council by the Honorable Joseph K. Toole, a member of the firm of Toole & Toole, eminent lawyers of the time, and gentlemen of excellent character. (Joseph K. Toole later became governor of the State of Montana).

In 1881 an Act was passed incorporating the Montana Library and making it a department of state consisting of two divisions, the Historical and Miscellaneous Division and the Law Division. The latter embraced all of the books, reports and legal literature belonging to the Territory. The judges of the Supreme Court were to constitute a Board of Directors of the Law Division and the Clerk of the Supreme Court, Mr. Isaac Alden, became ex-officio librarian at an annual salary of \$300 in addition to his salary as Clerk. The prescribed duties of the librarian required him to make a catalogue of the books, to mark all books on the inside cover and on the 30th page with the label "Montana Library—law division," and also to make an annual report to the Governor. Mr. Alden made the first catalogue of the law library which showed about 2,000 books, a number exceeded today by the New York and Pennsylvania Reports alone. Another provision of the Act was that any federal or state officer was privileged to borrow from either division, under such rules as might be prescribed by the Board, but that all other persons be required to deposit with the librarian a sum equal to double the value of the book borrowed, and to return the book to the library within three weeks. If that rule prevailed today, single cash deposits would range from one hundred to one thousand dollars. The board of directors was authorized to rent a suitable room for the office of the clerk of the Supreme Court, and \$250 was ap-

propriated for office fixtures and furnishings suitable for the proper care and placing of books. No record can be found as to what rooms were rented for this purpose.

In 1887 the law governing the Montana Library was recodified and the Act of 1881 repealed. However many of the principal provisions of the earlier act were retained. By the amending act the Secretary of the Territory was added to the Board of Trustees, and the Governor was required to immediately appoint a librarian at a salary of fifty dollars a month. The annual appropriation was increased to \$400 and there was also an appropriation of \$3,000 "for the purpose of purchasing and filling up the broken sets of laws, reports, statutes and additional text books."

In compliance with the Act Governor Potts appointed Miss Lou Guthrie Law Librarian on March 30, 1887. Miss Guthrie had served as librarian of the Helena City Library for a number of years during its infancy, and acted as State Law Librarian until 1901 when she retired, having been a very courteous and accomodating librarian, and greatly respected. Miss Guthrie died at Emmeralsburg, Maryland in 1915.

In the early part of the year 1883 the library consisted of not more than 2,500 volumes. At the time Miss Guthrie was appointed in 1887 the library possessed 3,250 volumes. That number represented the growth of the library during the years 1871 to 1887, a period of sixteen years, being at an average of 203 volumes each year. A second catalogue of the law library was made in 1888 by W. F. Wheeler, Esq., librarian of the Historical Division. Miss Guthrie issued a third catalogue in 1895 and a fourth in 1898, and with the assistance of Mr. August C. Schneider, Court Reporter for the State Supreme Court and a member of the Montana Bar, prepared another catalogue in 1901 which listed 10,000 volumes. No accession books or books of account were maintained in the library until about one year prior to Miss Guthrie's retirement. However, she made biennial reports to the Board of Trustees in which all books purchased during such periods were supposed to be enumerated. How that was done without keeping records is not understandable.

At the time of Miss Guthrie's retirement the technical work required to further advance and systematize the library

had so greatly increased that it demanded some one of legal training and experience to properly perform the duties of librarian and build the library to such a stage that it would be fully abreast of the times.

Mr. Oliver T. Crane was appointed to the office of State Law Librarian in the year 1902, and served until January 1, 1905. He was a gentleman of both legal and literary training and experience; a graduate of Yale University, and a member of the Montana Bar with some years of active practice. During the entire period of his incumbency as librarian he was also Supreme Court Reporter and Marshal—consequently a very busy man. Notwithstanding his many other duties he accomplished a great amount of needed work in the Library: arranged and systematized it, selected and accessioned many law books and other literature. Upon his retirement, after some two years or more of intelligent labor, the Library was left in a much advanced condition.

In November, 1904, Mr. Crane prepared a supplement to the catalogue of 1901 in which 2,000 additional books are listed. He also instituted the card catalogue system which is maintained today. All the books in the Library are now, and have been since 1907 or 1908, listed and catalogued in a card index, giving the full title, date and place of publication, and, if text books, full name of the author. These books are cross-indexed wherever such can be of any possible assistance.

By an Act of 1893 the Library Fund was created, to consist of twenty per cent of the fees of the Clerk of the Supreme Court.

In 1895 the Laws of Montana were recodified, including the act governing the State Law Library, which as then written is substantially the statute under which the Library operates today.

The code commissioners were learned and prominent members of the Montana Bar who appreciated law libraries and understood the hesitancy of legislative bodies in appropriating sufficient money to meet the Library's urgent needs and render it reasonably efficient. So in drafting that codification they added a provision to the effect that the fees of the office of the secretary of state should be paid into the permanent

fund of the Law Library. (Pol. Code 1895, Sec. 2389). These amounts were large. This provision of the code escaped the notice of the trustees of the Library as well as the executive departments of state until the fund had grown to very large proportions.

When the discovery was made by Mr. Crane the Library Board maintained that it was their legal right to use the entire accumulated fund for the benefit of the Library, and that it was much in need of the money. The executive branch of the state became very much perturbed over the matter, claiming that the expenditure of so much money by the library would wreck the finances of the state, and the Governor is said to have threatened to call a special session of the legislature to repeal that portion of the law and have the money diverted to the state's General Fund.

As it was not possible for the library to judiciously expend the fund before the legislature could convene, and in all likelihood deprive it of the money, the board finally compromised the matter by agreeing to accept a much lesser portion of the money, which they proceeded to immediately invest in books and other literature, fearing to lose the entire accumulation. Three thousand dollars was the compromised amount which the library received. Mr. Crane was Librarian at the time the money came into possession of the library and expended it with much skill and sound judgment. In 1903 the law was amended to provide the fees of the Secretary of State should thereafter be paid into the General Fund and not into the Library Fund Account.

When the writer of this sketch took office as librarian succeeding Mr. Crane, the annual appropriation for the purchase of books was \$750.00. While Mr. Crane had accessioned all the books possible with the funds provided, the appropriations had not been sufficient to keep the library abreast of the times. Quite a number of sets of important and much needed reports and other books had not been purchased, and many of the sets of state reports were far from being complete. It was very apparent that if the state was to possess a library which could meet the demands of the courts and servants of the state, not to mention the bar, it would be necessary to persuade the legislature to supply more money. The library board was composed of the Justices of the Supreme Court in the main, who for reasons best

known to themselves refrained from going to the legislature and requesting sufficient appropriations to meet the urgent needs of the library. That duty then fell to the librarian, who, after some hectic encounters, succeeded in getting the appropriation for 1907 and 1908 raised to \$1,500.00 per annum. Gradually the book appropriation was increased to \$3,000.00 annually. These appropriations, together with the money derived from the twenty per cent of the fees of the Clerk of the Supreme Court, enabled the librarian to complete many broken sets of reports, to purchase sets of recently published annotated reports, citators and digests lacking in the library, and to bring the library abreast of the times in current text books and in other much desired literature. The English reports were completed; the Irish and Scotch reports were acquired, as well as many of the Canadian Reports and a fuller set of Canadian session laws and revisions was collected than any which at the time could be found in any library in that Dominion.

By an Act of the Legislative Assembly of 1917 an annual license tax was imposed upon every attorney at law practicing within the State. The funds derived from such tax are to be, first, placed in the Lawyers License Tax Fund and the cost of examination of applicants for admission to the bar, as well as that of the prosecution of members of the bar for non-professional conduct, are to be paid out of said fund, and, secondly, the balance remaining in such Lawyers License Tax Fund is transferred on the 31st day of March annually, to the Library Permanent Fund Account, and becomes subject to use by the Law Library in the purchase of books and for other expenses.

Detailed enumeration of various appropriations would be quite tiresome to the reader. The only end attained in recording them here would be to enable the reader to judge to some extent how slowly the library developed. Suffice it to say therefore, that the total amount expended for purchase of books and literature for the library during the sixty-seven years, 1864 to 1930, inclusive, is the sum of \$121,855.92, as nearly as can possibly be ascertained. This amount includes federal expenditures, moneys received by legislative appropriation, moneys paid out from the Library Permanent Fund, and also the amount obtained in settlement of the controversy arising over the fees of the Secretary of State, hereinbefore related. After the year 1922 no appropriations were made for the purchase of books, the Law Library Fund Account having supplied all moneys expended.

The amount of money put into the purchase of books does not by any means represent the total value of the law library, as at least fifty per cent of the books accessioned have been received by way of exchange from sister states and other institutions.

When the writer of this sketch arrived in Helena in 1883 the Library was located in the old Alden Building, across the street and west from the old stone courthouse of Lewis and Clark County. (The Alden Building still stands and is now used as an apartment house). What the library's abode in Helena was prior to 1883, the writer has been unable to ascertain. Mr. Isaac R. Alden was the Clerk of the Supreme Court and ex-officio librarian. He had been a practitioner at the bar in the East prior to his appointment as Clerk of the Montana Supreme Court, and it was the Territory's good fortune to have a man so well qualified to fill such a position during the early formative period of the library's existence, in cooperation with the Chief Justice, the Honorable Decius S. Wade, a man of legal and literary attainments. Associate Justices of the Supreme Court during this time were Hiram Knowles, Francis G. Servis and Henry N. Blake. Those gentlemen were all well equipped in legal lore and kindred literature, and doubtless the librarian received enlightened instruction from them regarding selection of books and other law library matters.

Terms of the Supreme Court were at that time held in the Lewis and Clark County Courthouse, which was later torn down, after erection of the present building in 1884 and 1885. The new courthouse was planned with a view to housing, in addition to county offices and departments, the state government as soon as Montana should become a state. Quarters for the Law Library were provided on the third floor, where a dark, handsome heavy set of book stacks was installed. There it remained until completion of the state capitol building in June, 1902. The library was then removed to its first definitely established home, in a comparatively small room on the second floor, east of the main stairway in the new state house.

Directly it became apparent that the shelf room provided here was inadequate to properly accommodate the books. To meet this exigency four new metallic book cases, similar to those already in use, were purchased and put in place during the year 1903.

East and west wings were added to the Capitol building in

1910. Shortly thereafter the Law Library was removed to its present location on the third floor of the east wing. The library quarters are well arranged from an architectural standpoint and of ample proportions to accommodate it for a number of years to come. The room is beautifully lighted and on the upper wall panels are paintings of Montana landscapes by the late Ralph DeCamp of Helena. The metallic reading tables are ample in size, affording an agreeable place for study.

A Legislative Reference Bureau was created by Chapter 65 of the laws of 1909 and attached to the Historical and Miscellaneous Department of the State Library, where it remained until 1921. It was then by legislative act removed to and became a part of the Law Library. Mrs. Adeline J. Clarke was appointed Legislative Reference Librarian and Assistant Law Librarian when the Bureau was made a part of the Law Library.

Much valuable work was done in the Bureau while it was attached to the Historical Department of the State Library, and considerable material was collected. It was a wise and economical move on the part of the legislature to attach that Bureau to the Law Library inasmuch as a great amount of legal literature essential to a Legislative Reference department is to be found in the Law Library, and the move obviated much duplication.

The estimated number of books now constituting the Law Library (1930) is 65,000. About one-eighth of that number of books comprises the collection of statutory law. Very few libraries in the United States possess complete collections of all the session laws of the various states. In the Montana Law Library the collection of session laws published since the year 1815 by the Colonies and the older states is complete either in the original copies or the official reprints, with the exception of perhaps forty sessions. The missing volumes are all very rare, and it is only occasionally that one of them is obtainable. The Library has not endeavored to collect all of the private or the local laws of the various states.

Thomas Jefferson made an effort during the Virginia colonial period to make a collection of all the session laws of that colony for use of the bench and bar and of the historians of Virginia and the older colonies, thus showing his conception of their importance for all time. Nearly one hundred years elapsed before a few large libraries of the different states undertook the assembling of such collections, and proceeded to acquire all that

could be found in the market. I am advised that a scholarly Federal judge in Nevada Territory was the pioneer of the movement.

It has been recently stated by an expert in the matter of American statutory law that the collection of such books in the library alone is now worth, measured by the present market value of such literature, not less than the sum of \$250,000, and deducting from that sum the amount of \$121,855.92, the entire sum expended for the purchase of books by the State and the Federal Government, we have the sum of \$128,144.08 as a net profit, derived from the operation of assembling the law library. In other words, that collection, measured by its present market value, is worth more than twice the entire sum invested by the State in law books.

In addition to the American statutory law the library possesses a very excellent collection of the statutory laws of the Dominion of Canada, including many rare volumes. The Canadian laws are not taken into account in arriving at the above mentioned market values of the collection of American statutory law, but in themselves are worth several thousand dollars more than they cost the State. Included also in the statutory collection are all federal statutes from the organization of the federal government and all the General Laws of Great Britain since the Norman Conquest.

It has been an interesting quest to ascertain what books were in the small collection, if any, composing the library before the purchase made by the Federal Government in 1870, and also what books were included in that purchase, as that appears to be the real start of the library. For the purpose of answering these inquiries we have examined many sets of reports now in the library.

The Supreme Court did not begin to have its opinions printed until 1868. It had been rendering opinions for four years prior to that date, but few of them were written, and those few had been lost or destroyed.

By consulting the opinions published in Vol. 1 of the Montana Reports (commencing in 1868) we find the decisions of various courts cited. We know that several sets of the reports containing such opinions were not in the Law Library at that time. The first thirty-two volumes of the California Reports owned

by the Law Library is a reprint and was not issued until 1870 and thereafter. Nevertheless the court freely cited cases decided by the Supreme Court of that state appearing in those volumes.

In the opinion of our Supreme Court in the case of *Carrhart, Administrator, vs. Montana Mineral Land & Mining Company*, 1 Mont. 243, decided at the August term, 1870, we find citation to cases in California, Illinois, Missouri Supreme Courts and English Common Law Reports. That opinion was written by Justice Symes who sat first as an associate justice during the August term, 1869, and who was a man of no mean ability. At that date the Law Library did not contain a single volume containing any case so cited therein. The Illinois Reports possessed by the Library is a reprint edition, copyrighted in 1870. Our earlier volumes of the Missouri Reports seem to be of the original edition; two volumes of the set evidently had been the property of the Honorable Decius S. Wade, and he did not become a citizen of Montana and a justice of our Supreme Court until 1871. Those volumes at least were not in the Library in 1870. The English Common Law Reports is an American reprint of selected English cases, printed between the years 1857 and 1872 in Philadelphia. This set of books is marked as being the first set of books accessioned by the "Montana Library, law division" which was created by Act of 1881, and so could not possibly have been in the Territorial Library in 1870. The books which were in the Library prior to the year 1881 were marked by the brand "Montana" burned in the sheep binding. The Act of 1881 prescribed that all books should be marked with a stamp bearing the inscription "Montana Library, law division," so we reasonably conclude that no book marked with the new rubber stamp was procured prior to 1881. We find many of the books containing cases cited by the Court in the above named opinion were branded after 1881 and were not in the Library prior to that date. It might be inferred that the court cited many cases to which it did not have access, but knowing that several members of the bar had accumulated libraries of a few hundred books prior to 1870, it is my conclusion that the Court resorted to the private libraries of members of the bar.

The citations of authority in the briefs of counsel were generally to text books, and sometimes to cases cited in foot notes of the authors without the reports being available. Along with the California citations during 1869 there began to appear citations to cases in the N. Y. Reports, and in 1870 citations

of Massachusetts cases, and now and then a case from Illinois. Up to this date no mention can be found of a territorial library. It is evident, however, that the bar as it prospered had begun to purchase reports of several states for their private libraries. In 1883 when the writer came to Montana he found several private law libraries containing quite extensive accumulations of books, some closely rivaling the Territorial collection of that period, and a bar which would do credit to any eastern city or state.

These references to the citations by our early courts is in no way intended to cast the slightest reflection upon their action, but simply to call attention to the desperate and embarrassing situation under which they labored, and the reference to the different brands or stamps is made in an effort to show what books were in the Library during the different periods of their use.

Further and more detailed research might easily result in a much longer story of the growth of the Montana State Law Library. However the matters already set forth have without doubt convinced the reader that Montana's collection of law books should be forever cherished as representing a hard-won struggle against discouraging odds.

It has been a laborious but interesting task to delve into the archives of the Library for the facts presented in this brief history, but if it has awakened an interest in or created an appreciation for the value of the Library, or if it will be of assistance to anyone desiring to trace the history of Montana's legal development, which as herein shown has been contemporaneous with the development of its Law Library, the writer will be well repaid.

Update 1986

It is now fifty years since Asburn Barbour wrote the preceding historical sketch. Although our form definitely has been modified, our function remains the same. State Law Librarian Adeline Clarke wrote in her annual report of 1950-1952, "The law library is the Montana lawyers' own institution, both by usage and support. It is the aim of the staff to furnish the legal facilities to meet all demands present and future and to render the best service of which it is capable."

In 1949 the Law Library, which had been a department of the State Library, became separate and distinct, and was designated the State Law Library of Montana. It was placed in the control of a board of seven trustees, consisting of the Chief Justice and the Associate Justices of the Supreme Court, the Secretary of State, and the State Auditor (Chapter 153, 1949 Laws of Montana). In 1977 the above statute was amended to remove the Secretary of State and the State Auditor from the Board of Trustees (Chapter 142, 1977 Laws of Montana).

Our staff has grown from two to seven, and now includes professional librarians who are individually responsible for cataloging and reference. Both departments are heavily supported and enhanced by computerized services and databases. We acquire 2000 new volumes each year; these are accessible in a microfiche formatted catalog. The library is able to transmit copies of opinions, documents, and legislative histories to remote areas of the state via telefacsimile. Our future plans include the ability to offer simultaneous remote database searching, have an online serials check-in system, and have our catalog available on compact laser disk.

In 1983 the Law Library moved into the new Justice/State Library Building, along with the Supreme Court, the Attorney General, and the State Library. Our two floors of modern fixtures include compactable shelving. We continue to purchase new titles in the traditional legal subjects of taxation and real estate. Titles in subjects never contemplated during Mr. Barbour's day, such as equitable distribution and cable television franchises also are selected. We acquire materials in any format that is appropriate, including microform, audio and video cassette.

Funding for the library's operations comes entirely from the General Fund. We are able to contribute somewhat to the expense of our operations by charging fees for photocopying, online database searching, and videotape rentals. As Adeline Clarke said in her 1938 annual report, "The library is in good working order. It meets the demands made upon it admirably, and the bench and bar and the citizens of Montana are fortunate in having this balanced and well selected collection of law books for their use."

